

**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS**

<b>IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESALE PRICE LITIGATION</b>	)	<b>MDL No. 1456</b>
	)	<b>Master File No. 01-12257-PBS</b>
	)	<b>Subcategory Case No. 06-11337</b>
	)	
<b>THIS DOCUMENT RELATES TO:</b>	)	<b>Judge Patti B. Saris</b>
<i>State of California, ex rel. Ven-A-Care of the</i>	)	
<i>Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.</i>	)	
Case No: 03-cv-11226-PBS	)	
	)	

**STATUS REPORT - January 1, 2011**

The undersigned counsel, on behalf of plaintiff State of California, hereby submits the attached Status Report in accordance with the Court's June 17, 2004 Procedural Order.

Respectfully submitted,

EDMUND G. BROWN JR.  
Attorney General for the State of California

Dated: December 31, 2010

By: /s/ Nicholas N. Paul  
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STATE OF CALIFORNIA**

**MDL 1456 Status Report**  
**State of California, *ex rel.* Ven-A-Care v. Abbott Laboratories Inc., *et al.***  
**Case No.: 1:03-cv-11226-PBS**

**First Amended Complaint in Intervention**

Plaintiffs filed a First Amended Complaint in Intervention (FAC), with redacted exhibits, on August 25, 2005. (Master File 01-12257, Docket No. 1679). Plaintiffs also filed a motion for leave to file unredacted Exhibits under seal (Exhibits A-K and Exhibits M-R to the FAC), (Master File 01-12257, Docket Nos. 1680, 1703), which the Court granted via electronic order.

**Motions to Dismiss**

On January 17, 2006, Defendants filed a Joint Motion to Dismiss Plaintiffs' First Amended Complaint in Intervention. (Master File 01-12257, Docket Nos. 2047, 2051.)

On March 22, 2007, the Court denied in part and granted in part Defendants' joint motion to dismiss, and denied Abbott's individual motion to dismiss. (Master File 01-12257, Docket No. 3948.)

**Case Management Order (CMO)**

The Court entered Case Management Order 31 on August 1, 2007. (Master File 01-12257, Docket No. 4586.) Case Management Order 35 was entered on November 4, 2008. (Master File 01-12257, Docket No. 5664.) Pursuant to the Court's request, on February 20, 2009, the parties filed a Joint Motion for Entry of Proposed Amendment to Case Management Order No. 31. (Master File 01-12257, Docket No. 5920; Subcategory File 06-11337, Docket No. 182.) The motion and amended CMO were granted by the Court on March 4, 2009. (Master File 01-12257, Docket No. 5942; Subcategory File 06-11337, Docket No. 186.)

The parties filed a Joint Motion to Set Revised Briefing Schedule for Motions for Summary Judgment and Amend CMO 31 on October 16, 2009, (Master File 01-12257, Docket

No. 6597; Subcategory File 06-11337, Docket No. 497), which the Court granted on October 28, 2009.

### **Alternative Dispute Resolution**

The parties engaged in mediation with Eric Green in April 2009, with negative results. A renewed round of mediation with one Defendant took place on December 6, 2010 with no results.

### **Other Resolution**

On December 23, 2010, Plaintiffs filed Stipulated Dismissals as to Defendants Dey Pharma, L.P. and Dey, Inc. (Master File 01-12257, Docket Nos. 7361 and 7362; Subcategory File 06-11337, Docket Nos. 842 and 843). The Court entered the order as to Docket Nos. 7361 and 842 on December 29, 2010, granting the stipulated dismissal (Master File 01-12257, Docket Nos. 7363; Subcategory File 06-11337, Docket No. 844). The Court has not yet entered the order as to Docket Nos. 7362 and 843.

### **Pending Matters**

#### **Discovery Motions:**

On August 21, 2009, Defendants filed their Motion for an Order Granting Leave to Take Deposition Out of Time, seeking to take the deposition of Thomas Ahrens after the discovery cut-off date of June 15, 2009. (Master File 01-12257, Docket No. 6394; Subcategory File 06-11337, Docket No. 376.) Also on August 21, 2009, Defendant Sandoz Inc. filed its Motion to Determine the Sufficiency of Plaintiff State of California's Response to Sandoz Inc.'s First Set of Requests for Admission. (Master File 01-12257, Docket No. 6392; Subcategory File 06-11337, Docket No. 373.) Plaintiff filed its oppositions to Defendants' motions on September 4, 2009

(Master File 01-12257, Docket Nos. 6480, 6482; Subcategory File 06-11337, Docket Nos. 436-437.)

No hearing has been set and no orders have been issued on these motions.

**Summary Judgment Motions:**

On November 24, 2009, Plaintiffs filed a Motion for Partial Summary Judgment. (Master File 01-12257, Docket No. 6685-92, 6714-15; Subcategory File 06-11337, Docket No. 547-554, 573, 575.)

On November 25, 2009, Defendants filed a Joint Motion for Partial Summary Judgment. (Master File 01-12257, Docket No. 6702-6703, 6710; Subcategory File 06-11337, Docket No. 563-565.) Defendants also filed three individual Motions for Summary Judgment on November 25, 2009. (Master File 01-12257, Docket Nos. 6694-98, 6699, 6700, 6704-6705, 6707-6708, 6709, 6711; Subcategory File 06-11337, Docket Nos. 555-559, 560, 562, 565, 567-571.)

On December 21, 2009, Plaintiffs filed their opposition briefs to Defendants' joint and individual Motions for Partial Summary Judgment. (Master File 01-12257, Docket Nos. 6779-92; Subcategory File 06-11337, Docket Nos. 615-628.) Defendants also filed their opposition to Plaintiffs' Joint Motion for Partial Summary Judgment (Master File 01-12257, Docket Nos. 6793-6801; Subcategory File 06-11337, Docket Nos. 629-637.)

On January 15, 2010, Plaintiffs filed their reply in support of their Motion for Partial Summary Judgment. (Master File 01-12257, Docket No. 6842; Subcategory File 06-11337 Docket No. 650.) Relator, Ven-A-Care of the Florida Keys, Inc., filed a separate Reply to Defendants' Joint Brief in Opposition to Plaintiffs' Motion for Partial Summary Judgment. (Master File 01-12257, Docket No. 6843; Subcategory File 06-11337, Docket No. 659.)

Also, on January 15, 2010, Defendants filed their reply briefs in support of their joint and individual motions for partial summary judgment. (Master File 01-12257, Docket Nos. 6837-41, 6844-48; Subcategory File 06-11337, Docket No. 648-649, 652-658.)

On January 29, 2010, Plaintiffs filed their sur-reply briefs in opposition to Defendants' joint and individual motions for partial summary judgment. (Master File 01-12257, Docket Nos. 6872-76, 6878; Subcategory File 06-11337, Docket Nos. 668-673.) Defendants also filed their sur-reply in opposition to Plaintiffs' motion for partial summary judgment. (Master File 01-12257, Docket Nos. 6877, 6879; Subcategory File 06-11337, Docket Nos. 674-675.)

Plaintiffs' and Defendants' motions for summary judgment were set for hearing on November 17, 2010.

On November 10, 2010, Plaintiffs filed their Unopposed Motion to Reschedule Hearing on the Summary Judgment Motions (Master File 01-12257, Docket No. 7303; Subcategory File 06-11337, Docket No. 830). An electronic order was entered on November 23, 2010, granting the motion and setting the hearing for January 21, 2011.

**Miscellaneous Motion(s):**

Defendants filed a Motion for Remand November 25, 2009. (Master File 01-12257, Docket No. 6701; Subcategory File 06-11337, Docket No. 561.) Plaintiffs filed their opposition to the motion on December 9, 2009. (Master File 01-12257, Docket No. 6749; Subcategory File 06-11337, Docket No. 596.)

This motion was set for hearing on November 17, 2010.

Plaintiffs filed their Unopposed Motion to Reschedule Hearing on the Summary Judgment Motions (Master File 01-12257, Docket No. 7303; Subcategory File 06-11337, Docket

No. 830) seeking to reschedule the hearing. An electronic order was entered on November 23, 2010, granting the motion and setting the hearing for January 21, 2011.

**CERTIFICATE OF SERVICE**

I, Nicholas N. Paul, hereby certify that on December 31, 2010, I caused a true and correct copy of the foregoing, **Status Report-December 31, 2010**, to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Nicholas N. Paul  
NICHOLAS N. PAUL